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West End Street Railway Co.
Boston Elevated Railway Co.

*7650.41

LEASE.

Fred P.Clappison
June 2, 1904

*76 50.41

This Indenture, made in duplicate, this day of , A.D. 1897, by and between the West End Street Railway Company, a corporation existing under and by virtue of the laws of the Commonwealth of Massachusetts, party of the first part, and hereinafter denominated the "Lessor," and the Boston Elevated Railway Company, a corporation existing under and by virtue of the laws of said Commonwealth, party of the second part, and hereinafter denominated the "Lessee,"

WITNESSETH, That the said parties, each for itself, its successors and assigns, and each in consideration of the grants, covenants and engagements herein made by the other, have granted, covenanted and agreed, and do hereby grant, covenant and agree, each to and with the other, and its successors and assigns, as follows, to wit:

I.

The Lessor doth grant, assign, transfer, demise and lease unto the Lessee, its successors and assigns, subject to all legal obligations and incumbrances thereon, its railway and property of every description; including therein its railway, branches, tracks, side-tracks, road-beds, lands, stations and station grounds, viaducts, shops, car-houses, power-houses, buildings, fixtures, cars, horses, rolling stock, machinery, tools, furniture, patents, licenses, telegraphic and electrical apparatus, poles, wires, conduits, equipment, material and supplies and cash on hand at the inception of this lease, and all accounts and notes receivable, whether secured by mortgage or otherwise, and all rights, franchises, easements, privileges and appurtenances thereto belonging, together with the right to demand and receive all tolls, rent, revenue, income and profits of the demised premises; including therein, subject to all the duties, obligations and undertakings thereby imposed, all the rights, privileges and powers granted and conveyed to the Lessor by a certain contract between it and the City of Boston, acting by the Boston Transit Commission, dated December 7th, A.D. 1896; and also including therein, subject to all legal

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obligations and incumbrances thereon, all the right, title and interest of the Lessor in and to any and all street railways operated by it, directly or indirectly, under lease or operating contract or through ownership of stock or otherwise, and in and to any stock of other street railway companies, all dividends thereon, and its right of voting thereon, and in and to any bonds, obligations and contracts of or with other corporations or individuals and all income or other advantages and benefits to be derived therefrom.

TO HAVE AND TO HOLD all and singular the demised premises to the Lessee, its successors and assigns, for and during the term of ninety-nine years from and after the first day of October A.D. 1897, the said Lessee keeping and performing the covenants herein contained on its part to be kept and performed and yielding and paying rent for the said premises to the amount and in the manner following, to wit:

1. The Lessee shall pay all operating expenses of the Lessor and of all railways of which it shall come into possession under and by virtue of this instrument, there being included therein, as part thereof, all repairs and, subject to the provisions of Article VI., all renewals; all expenditures arising out of any contract, obligation, business, negligence or misfeasance, or however otherwise arising, and whether the liability for the same now exist or be hereafter created, in any way connected with the use and operation of the demised premises, except the scheduled indebtedness hereinafter mentioned, and including damages to persons or property, insurance, taxes of every description, federal, state or municipal, levied upon the Lessor's property, income, business, franchises or capital stock, or by law required to be deducted from any amounts payable upon the Lessor's stock; all expenses consequent upon or incidental to the renewal or refunding of the Lessor's indebtedness, or that of any company for which it is responsible; all necessary legal expenses of the Lessor; all expenses incidental to the transfer and registration of the Lessor's stock and bonds, provided that the Lessee shall have the right to designate from time to time the registration and transfer agents, and if at any time the Lessor is disatisfied with the responsibility of any transfer or registration agent so designated another agent shall be designated unless the Arbitral Board hereinafter mentioned shall approve of the continuance of the first agent; any expenditures hereinafter declared to be

operating expenses; and the expenses of maintaining the organization of the Lessor, for which expenses, in addition to sufficient and suitable offices in Boston, with appropriate furniture and fittings to be supplied by the Lessee, there shall be paid to the Lessor at the end of each successive six months during the term of this lease, the sum of three thousand seven hundred and fifty (3750) dollars; provided, however, that the Lessor shall, from the proceeds of bonds heretofore issued or authorized, or of stock or bonds, or both, hereafter to be issued and authorized, (as provided in Article IV., from time to time repay to the Lessee all sums which the Lessee shall pay on account of any indebtedness existing at the date hereof which has been incurred for permanent additions or improvements to the demised property, or which it may be obliged to pay under any existing contract for like purposes, or which it may be obliged to pay for the purpose of completing any work in the nature of such permanent additions or improvements already in part or in whole contracted for by the Lessor; and provided further that the Lessor shall at the expiration or earlier termination of this lease reimburse the Lessee for all sums which it, the Lessee, may be obliged to pay on account of any indebtedness or liability of the Lessor existing or incurred prior to the inception of this lease other than for permanent additions or improvements, and also for such proportional part of all rentals, taxes, interest and dividend charges on preferred stock, as shall have accrued prior to the date hereof and shall be paid by the Lessee.

2. The Lessee, during the continuance of this lease, shall pay, as the same may from time to time become due, the rental of any railway of which it shall come into possession, by virtue of this lease; shall pay to the holders thereof the interest on the existing indebtedness of the Lessor and on the existing indebtedness of any street railway company whose indebtedness the Lessor is under obligation to pay, a schedule whereof is hereto annexed, and the interest upon any future indebtedness created in the manner hereinafter provided. The Lessee shall assume and pay the current expenses and indebtedness upon open account of the Lessor outstanding at the inception of this lease, and the same shall be accounted for and reimbursed to the Lessee from the proceeds of stock or bonds as hereinbefore provided so far as the indebtedness is for permanent additions or improvements, and

at the expiration or earlier termination of this lease so far as the indebtedness is not for permanent additions and improvements.

The Lessor shall turn over to the Lessee all cash on hand, all bills, notes and accounts receivable outstanding at the inception of this lease, and all sums received thereon and all cash on hand shall be accounted for and paid over to the Lessor without interest at the expiration or earlier termination of this lease, together with a sum equal to all then accrued and unpaid rentals, taxes, interest and dividend charges on preferred and common stock; provided, however, that so far as proceeds of bonds heretofore issued under authority of the Railroad Commissioners or authorized by them are received by the Lessee under this Indenture, such proceeds shall be applied by the Lessee to the specific purposes for which said bonds were authorized, and the Lessee shall not be obliged to account therefor except by showing that such proceeds have been so applied.

3. The Lessee shall on the first day of April, 1898, and thereafter on the first days of October and April in each year during the continuance of this lease, pay to each holder of record of common stock of the Lessor a sum equal to two (2) dollars for each and every share of common stock so held by him, and shall, on the first days of January and July in each year, during the continuance of this lease, pay to each holder of record of the preferred stock of the Lessor a sum equal to two dollars per share for each and every share of preferred stock so held by him; it being the intent hereof that the stockholders of the Lessor shall receive four (4) per cent. semi-annually, net, during each and every year this lease continues in force. The Treasurer of the Lessor shall, at least five days before each date of payment, furnish the Lessee with a certified list of the holders of record of the common or preferred stock of the Lessor entitled to dividends on such date.

II.

The Lessee, as assignee hereunder of the contract of the Lessor with the City of Boston for the use of the subway, dated December 7th, 1896, hereby assumes all liabilities of the Lessor under said contract, shall punctually pay to the City of Boston the compensation therein stipulated at the times and in the manner therein set forth, and shall fulfil every obligation, express or implied,

therein devolved upon the Lessor in the same manner and with the same effect as if said contract had been made with the Lessee.

Such alterations of said subway and its approaches as may be necessary to connect the same with the Lessee's road and to adapt the same to the use of the Lessee's road, shall, if made by the Lessee, with the approval of the Transit Commission, be borne exclusively by the Lessee; if, however, said alterations are made by the Transit Commission upon request of the Lessee, pursuant to the provisions of section 12 of chapter 500 of the Acts of 1897, nothing herein shall be construed as requiring the Lessor to make or join in any agreement respecting the same; provided, however, that at the expiration or earlier termination of this lease, said subway, if it shall then be in the control of the Lessee, shall be delivered to the Lessor in as good order and repair as the same shall be in when the use thereof shall be begun under said contract, and so that the same shall be equally well fitted for the independent use and operation thereof by the Lessor.

Any failure to comply with the terms of said subway contract by the Lessee shall be deemed a violation of the covenants of this lease, giving the Lessor the rights and remedies herein provided in case of violation, including a right of entry and repossession if such failure shall have continued for sixty days; provided, however, that if the Lessor shall at any time deem it necessary for its own protection, it may itself make any payment required by said subway contract and may fulfil any other provision thereof, and in every such case, while retaining unimpaired all its rights and remedies against the Lessee, shall have the right to require the Lessee to indemnify it for all money thus expended and for all loss thus sustained.

The Lessee, in anticipation of the expiration of said subway contract, shall use its best endeavors to agree with the City of Boston upon a new contract for a renewal or extension of the same upon the most favorable terms practicable, in which said new contract shall be embodied stipulations satisfactory to the Lessor, providing for the use and control of said subway by the Lessor upon the expiration or earlier termination of this lease.

All of the provisions of this lease applicable to said existing subway contract shall apply to any contract renewing or extending the same in the same manner and with the same effect as if said new contract had been in existence at the inception of this lease.

Extensions of said subway under the existing contract shall not be requested nor promoted by the Lessee except with the consent of

the Lessor first had and obtained. In the event of any extension thereof under any other contract, or of the construction of any new subway, the use and control thereof if acquired by the Lessee shall be so acquired that upon the expiration or earlier termination of this lease, if such extension or new subway constitute an essential part of the Lessor's surface system, the same shall belong to the Lessor; that if such extension or new subway constitute an essential part of the Lessee's system, the same shall belong to the Lessee; that if such extension or new subway be capable of concurrent use by both systems, provision shall be made for such concurrent use by both Lessor and Lessee; and that if such extension or new subway constitute an essential part of both systems, but be incapable of concurrent use by both, the Arbitral Board provided for by Article XII., shall determine, in view of all the equities of the case and of all the private and public considerations involved, to which of said systems the use and control of said new extension or new subway shall belong.

Provided, however, that the right of said Arbitral Board to assign the use and control of said new extension or new subway to the Lessee shall not affect or impair nor be affected or impaired by, the obligation hereinafter imposed upon the Lessee to return the Lessor's road without break of continuity or connection.

III.

The Lessee shall assume all traffic balances due from the Lessor to other companies; shall assume and have the benefit of all contracts of the Lessor for equipment, supplies and material and all other contracts and liabilities of the Lessor to and with individuals or corporations express or implied (its contracts with the holders of its indebtedness as scheduled excepted); shall assume and defend all suits against the Lessor arising out of or in any way connected with the past or future use or operation of the railways demised or directly or indirectly operated by the Lessee under and by virtue of this instrument, and shall pay all judgments obtained thereon against the Lessor or which the Lessor is under obligation to assume; and shall assume and discharge all liabilities of the Lessor except as herein otherwise provided.

IV.

The Lessee shall pay the interest upon any portion of the indebtedness of the Lessor or of any Company for whose indebtedness the Lessor is responsible that shall be renewed or extended during the term of this lease in like manner as upon the same indebtedness before renewal or extension.

In case it shall become necessary under the provisions of this lease for the Lessor to make payment for permanent additions, alterations or improvements to the demised premises, or to pay or refund any portion of the indebtedness mentioned in the annexed schedule, or any indebtedness hereafter incurred and scheduled, or to pay or fund any indebtedness contracted for permanent additions and improvements prior to the inception hereof, or to make any repayments to the Lessee for expenditures made by it for the foregoing purposes, the Lessor shall, from time to time at the request of the Lessee, issue additional stock or bonds, or both, to an amount sufficient for the purpose so far as it may legally have or can obtain the right so to do. In such cases the Lessor shall, at the expense and under the direction of the Lessee, do all such acts and things as may be necessary or proper to obtain the requisite authority for the issue desired from the Board of Railroad Commissioners or from any other board having jurisdiction in the premises or from the Legislature. Said stock and bonds so issued shall, except so far as other provision is made by law, be sold under the direction of the Lessee. In so far as the proceeds of any issue of stock or bonds exceed the amount to obtain which the issue has been authorized, the excess shall be paid over to the Lessee to be invested by it in permanent additions, alterations or improvements to the demised property, under the provisions of Article VI.

The Lessee shall in all cases have authority as between the parties to decide whether stock or bonds, or both, and what amount thereof, shall from time to time be issued, and shall also have the right to determine the rate of interest upon all interest-bearing obligations, and the time for which they shall run, whether the same are issued for the purpose of refunding or paying indebtedness or for the purpose of paying for permanent additions, alterations or improvements to or upon the demised property; provided, however, that no bonds shall be issued in excess of the outstanding capital stock of the Lessor; that no bonds shall be issued to become payable after the expiration of this lease without the consent of the Lessor; that all

bonds shall be payable in lawful money of the United States, unless, in the case of bonds issued to refund gold bonds of the Lessor already outstanding, the parties shall otherwise agree; that no such bonds shall be sold at less than par; and that the benefit of all reductions in interest shall accrue to the Lessee. All stock issued as provided in this article shall from the time of such issue be deemed part of the Lessor's capital stock within the provisions of Clause 3 of Article I. of this Indenture, and all bonds so issued shall be scheduled and the interest paid as part of the Lessor's indebtedness under and pursuant to Clause 2 of Article I.

V.

The lessor shall make and execute such other leases or operating contracts with other street railway companies as the Lessee may request, every such lease or contract, however, if the Lessor shall so elect, to expire simultaneously with the expiration or earlier termination of this lease, and all obligations, liabilities and losses arising therefrom to be assumed and sustained exclusively by the Lessee.

The Lessee shall have the right of voting on all stock owned by the Lessor in other corporations, and said stock shall not be sold or otherwise disposed of except with the assent of both the Lessor and the Lessee.

VI.

The Lessee shall have the right at its own expense to alter the tracks of the demised railway and to build such sidings and branches as may be necessary to connect the demised railway with the stations or railroad of the Lessee.

The Lessee may from time to time make such additions to, alterations and improvements in the demised railway, its rolling stock, tracks, equipment, power-houses, car-houses, stations, structures and appurtenances, as it may deem necessary for the purpose of making better provision for the due and safe transportation of the public, or for the purpose of complying with any requirement of law or public or municipal authority, or for the purpose of reducing the operating expenses of the demised railway.

The Lessor shall from time to time, either from moneys received by the Lessee under Article VII. or from the proceeds of stock and

bonds lawfully authorized, and in no other manner, repay to the Lessee the cost of such permanent additions, alterations and improvements made by the Lessee, as the Lessor may consent to, or, if such consent be refused, as the Arbitral Board provided for in Article XII. shall determine that the Directors of the Lessor, if actually operating the Lessor's road, would be justified in making in the interest of the Lessor.

Permanent additions, alterations and improvements for which the Lessor may be called upon to pay under the provisions of this lease shall consist of,—

(1) The abolition of grade crossings.

(2) Additional rolling stock and its equipment.

(3) Additional track mileage and its equipment.

(4) Additional real estate.

(5) Additional stations, additional power-houses with their equipments, and additional car-houses with their equipments.

(6) Additional bridges, buildings and other structures.

(7) Renewals of or substitutions for stations, bridges, buildings and other structures, tracks and equipment, rolling stock and equipment, power-houses and equipment and car-houses and equipment, so far as the cost of such renewals or substitutions exceeds the cost, when new, of the things renewed or the things replaced.

Provided, however, that the road of the Lessor shall so far as practicable continue unimpaired in length and value; that no part of the same shall be voluntarily discontinued except with the consent of the Lessor; that road discontinued by compulsion of law in consequence of the result of the construction and operation of the Lessee's elevated road, shall, within a reasonable time, be made good to the Lessor by other road of equal value constructed by the Lessee at its own expense, or otherwise shall be paid for at its value in money to be applied as in case of the proceeds of real estate under Article VII.; and that new track mileage shall be deemed a permanent addition or improvement hereunder only when increasing the mileage of the Lessor's road as existing at the inception of this lease, or when exceeding in cost the cost of road previously discontinued, and then only to the extent of such increase or such excess of cost. Track mileage discontinued or removed from Tremont Street in Boston between Boylston Street and Scollay Square and from Boylston Street between Park Square and Tremont Street

under the provisions of section 35 chapter 548, Acts of 1894, and all track mileage discontinued under compulsion of law which has been paid for by the Lessee as above provided, shall, for the purpose of computing additional mileage to be paid for by the Lessor, be deducted from the aggregate mileage of the Lessor's road existing at the inception of this lease.

Any moneys from time to time in the possession of the Lessee which are by the terms of this Indenture applicable to such purpose shall first be applied to the repayment to the Lessee of the cost of permanent additions, alterations and improvements, and only the balance remaining unpaid shall be paid from the proceeds of stock or bonds or both to be issued by the Lessor as provided in Article IV.

The Lessee shall have the right to apply for the necessary consent of the Lessor or for the necessary certification or determination of said Arbitral Board either before said additions, alterations and improvements are made or within one year thereafter.

The Lessee shall not directly or indirectly locate or construct, or through any agency or device promote or aid in the location or construction of any surface street railway paralleling or in any way competing with any surface street railway, or any portion thereof, demised to or directly or indirectly operated by the Lessee by virtue of this lease.

VII.

Real estate of the Lessor in the judgment of the Lessee not required by the Lessee for the conduct of its business may be sublet by the Lessee for a period not longer than the expiration or other earlier termination of this lease.

Such real estate may also be sold with the consent of the Lessor to be given upon the reasonable request of the Lessee, and the proceeds of said sale shall be received by the Lessee and applied either to purchasing and retiring the outstanding indebtedness of the Lessor as scheduled or to making permanent additions, alterations or improvements upon the property demised or operated by virtue of this lease,— as the parties hereto may agree. If such proceeds are applied to retire outstanding indebtedness, the annual rental to be paid by the Lessee under Clause 2 of Article I. hereof shall be reduced by the amount of the saving in interest charges thereby effected.

If the parties are unable to agree as to whether a sale of said real estate is reasonable or upon the terms thereof or upon the application of the proceeds, the matters in difference shall be determined by the arbitrators provided for in Article XII. hereof.

If the City of Boston, upon the expiration or any earlier termination of said Subway contract, shall take over and become the owner of the tracks, wires, appliances, fixtures, machinery and other equipment of said Subway, any money paid for the same, so far as such money shall represent Subway equipment supplied by the Lessor, shall be applied or disposed of in the manner in this Article prescribed respecting the proceeds of sale of real estate.

The Lessee shall also receive any money paid by the City of Boston on account of Subway equipment, also all money not yet received to which the Lessor may be or become entitled for land or property taken by public authority, either before or after the date hereof, or for injury or damage to the same and apply the same as hereinabove provided with respect to the proceeds of real estate.

VIII.

The Lessee shall, subject to the special provisions of this Indenture, at its own expense maintain and keep the demised premises and all the property and fixtures of every description which it shall receive or operate under this lease in as good order and condition as the same now are or shall be when received by the Lessee, so that there shall be no depreciation as to quality or quantity in the same or any part thereof, and, at the expiration or earlier termination of this lease, shall, subject to the special provisions of this Indenture return the same to the Lessor in the same good order and condition, and put the Lessor in possession of all the railways and property at said time demised to the Lessee under this Indenture. The Lessee shall use and operate said railways and properties so demised and operated in accordance with all laws of the Commonwealth of Massachusetts, all municipal ordinances, and all orders of the Railroad Commissioners or of any public authority that may be applicable thereto; shall, subject to the provisions of Article VI. furnish all horse or electric or other power, all engines, rolling stock and equipment of every description required, in addition to the like property hereby

demised, for the due operation of the railways operated under and by virtue of this Indenture; shall observe and perform all the provisions of contracts of the Lessor with companies whose railways now are or hereafter may be operated under this Indenture; shall keep the demised premises reasonably insured and shall apply the proceeds of any insurance to restoring or replacing the property destroyed or to making permanent improvements, not in the nature of ordinary repairs, upon the demised premises; shall apply the proceeds of the rolling stock, equipment and other personal property herein demised, which it may deem advisable to sell and which it is hereby authorized to sell at its discretion so as to substitute therefor like property of equal value; shall replace buildings or structures on the demised premises taken down or removed, and which the Lessee is hereby authorized to take down or remove at its discretion, with other buildings, structures or permanent improvements upon the demised premises of equal value and equally convenient for the use of the Lessor at the expiration or earlier termination of this lease, or shall apply a sum of money equal to the value thereof in the same manner as the proceeds of real estate are to be applied under Article VII.; shall permit the demised premises to be inspected annually by the Lessor's Directors and by some competent person appointed by the Lessor who shall report to the Lessor the condition of said premises and shall, for the purpose of such inspection, be furnished with free transportation over the railways operated under and by virtue of this Indenture and shall receive a reasonable compensation for his services to be paid by the Lessee; shall make all returns required by law and shall furnish the Lessor with such abstracts of accounts as shall enable it to make all returns required of the Lessor; shall not assign this lease nor underlet the premises or any part thereof without the written assent of the Lessor first had and obtained, except as provided in Article VII. hereof and except that nothing herein shall be construed to impair the right and power of the Lessee to mortgage or pledge the interests acquired under and by virtue of this lease in accordance with the authority conferred by chapter 500 of the Acts of 1897; and at the end of the term of this lease, or at any earlier termination thereof from any cause whatever, shall surrender the real and personal estate demised under and by virtue of this Indenture, to be ascer-

tained and determined according to the inventory hereinafter provided for, in the like good order and condition in which they are at the inception of this lease, or when received by the Lessee or may be put during the term, with all improvements thereon or additions thereto, the amount of money, materials and supplies to be surrendered or accounted for to the Lessor to be equivalent in value to the amount on hand at the inception of this lease, as shown by said inventory, and all stocks, bonds and securities, or any bonds, stocks or securities substituted therefor under the provisions of this Indenture to be returned at the expiration or other earlier termination of this lease.

Provided, however, that the continuity of the Lessor's road, whenever returned to the Lessor, and the connection between its several parts shall be such that said Lessor's road will be as well fitted for independent use and operation by the Lessor as at the inception of this lease, — any compensation for mileage previously discontinued and paid for but restored or made good, under this provision, to be accounted for and reimbursed to the Lessee.

IX.

That the property herein demised, and to be accounted for at the expiration or earlier termination of this lease may be accurately determined, there shall be made, as of the day when this lease takes effect, a full, complete and particular inventory and description of all estate and property, real or personal, belonging to the Lessor, and coming into the possession of the Lessee by virtue of this lease, and to this, from time to time, shall be added such other estate and property as shall come into the possession of the Lessee under the terms of this Lease. Such inventory and description, with the additions thereto from time to time, shall be made by two competent persons, one selected by each party; in case of their disagreement, they shall refer the matter in difference to some third person, whose decision shall be final. Such inventory and description shall be made in duplicate, and an original furnished to each party, and shall be evidence of the nature and condition of the property demised at the inception of this lease, or at the time of the additions thereto in all cases in which any questions of the nature, condition or value may arise. The reasonable compensation for services and expenses of the persons making such inventory shall be paid by the Lessee.

X.

The Lessor shall maintain its existence and organization as a corporation, and to that end shall comply with all the requirements and forms of law; shall do all acts and things, and execute all legal instruments necessary and proper to put and secure the Lessee in the full enjoyment of all the property, rights, franchises and interests herein demised, and to carry into effect the true intent and meaning of this Lease; and shall not increase its capital stock as now existing and issued nor its indebtedness except as provided in this Lease. To further secure the Lessee in the beneficial enjoyment of the property, franchises, rights and privileges herein demised and specified, the Lessor constitutes the Lessee its attorney irrevocable with full right and power, at the Lessee's expense, to use the name of the Lessor in all legal proceedings and in all cases needful for obtaining, holding and enjoying the premises herein demised and specified, and for all purposes consistent with the true scope and intent of this instrument.

The Lessor further covenants that it will at the expense of the Lessee comply with all requirements of law and with the ordinances of all cities and towns in which the demised property is located, in so far as the Lessee cannot act in its stead, and that it will at the request of the Lessee, itself make applications for extensions or alterations of tracks and locations where the Lessee cannot act in its stead, and will at all times when it cannot act by the Lessee as attorney, itself do such acts and execute such papers as may be necessary or proper to carry out the true intent of these presents. Any locations, rights or property so acquired by the Lessor after the date hereof shall be made subject to the provisions of this indenture. The Lessor also constitutes and appoints the Lessee its attorney in fact with full power to collect and receive all moneys due to the Lessor, and to compromise or refer to arbitration all claims by or against the Lessor or its property.

XI.

This lease is upon the condition that, if the Lessee shall at any time fail to punctually pay to the holders of the Lessor's indebtedness and each of them the interest on the Lessor's indebtedness as scheduled as the same shall become due and payable, or

shall fail to make any payment as stipulated for in Clause 3 of Article I. hereof, then, and in such case, at any time after the expiration of thirty days from the time when written notice of such default has been served on the Lessee, the Lessor may if such default still continues enter upon the demised premises and upon any part thereof, as and for the whole, and expel the Lessee, and determine the estate hereby granted, and shall thereupon become seized and possessed of the demised premises, and of all premises then in possession of the Lessee or the Lessor under this indenture, and of every part thereof in its original right, and as if this lease had never been made; and upon the further condition, that if the Lessee shall fail to perform any other of the covenants and agreements in this lease contained, and such failure shall continue for six months after written notice of such failure from the Directors of the Lessor, the Lessor shall have the like right to enter and expel the Lessee, and vest in itself its former estate in the demised premises, and all premises then in possession of the Lessee or the Lessor under this indenture, and every part thereof; provided, however, that such entry by the Lessor for breach of condition shall in no wise prejudice or impair any remedies to which it might otherwise be entitled for arrears of rent or preceding breach of covenant, or any other rights secured by this lease in case of its termination before the expiration of the time thereof.

XII.

In case of any disagreement between the parties hereto as to the true intent and meaning of this lease or any part thereof, or as to anything done under and by virtue of it, or growing out of it, the matter in controversy shall be determined by arbitrators to be chosen in the manner following: One shall be chosen by each of the parties hereto, or if either shall unreasonably fail or neglect to appoint an arbitrator when requested by the other, the Board of Railroad Commissioners or the Chief Justice of the Superior Court may, after due notice to the party so failing or neglecting appoint an arbitrator. The third shall be selected by the two so chosen, or in case of their failure to choose a third, by the Board of Railroad Commissioners or the Chief Justice of the Superior Court. The arbitrators shall hear the parties, after due notice to

each of them, and if either party fail to attend after such notice, may proceed *ex parte*. The award in writing of said arbitrators, or a majority of them, being duly notified to the parties, shall be final and conclusive upon them. The expenses and reasonable compensation of said arbitrators shall be paid by the Lessee.

XIII.

This lease shall take effect as of the first day of October, 1897, and all accounts between the parties shall be made up as of that date; provided, however, that on or before January 1, 1898, at least five millions (5,000,000) dollars in cash shall have been paid in upon the Lessee's capital stock, and that until such payment the Lessor shall remain in possession and operation of the demised property,— the Lessor accounting to the Lessee for all income in the interval; and provided further that this lease shall not be valid until the terms thereof, as respects the rental or compensation to be paid and the due and safe transportation of the public shall have been approved by the Board of Railroad Commissioners.

IN WITNESS WHEREOF, the said parties, by their respective Presidents and Treasurers, thereunto duly authorized, have caused their corporate seals to be hereto affixed, and these presents to be executed the day and year first above written.

SCHEDULE OF INDEBTEDNESS REFERRED TO IN THE WITHIN LEASE.

WEST END STREET RAILWAY COMPANY.

Funded Debt.

Bonds	Highland St. Ry. due Jan. 1, 1898, 6%	$100,000.00
"	" " " due May 1, 1902, 5%	300,000.00
"	West End St. Ry. due Nov. 1, 1902, 5%	3,000,000.00
"	Cambridge R.R. due Apr. 1, 1903, 5%	480,000.00
"	Metropolitan R.R. due Dec. 15, 1903, 5% . . .	500,000.00
"	Chas. River St. Ry. due Apr. 1, 1904, 5% . . .	150,000.00
"	Middlesex R.R. due July 1, 1904, 5%	200,000.00
"	So. Boston H. Ry. due May 1, 1905, 5% . . .	200,000.00
"	Boston Con. St. Ry. due June 1, 1907, 5% . . .	500,000.00
"	West End St. Ry. due Mar. 1, 1914, 4½% . . .	2,000,000.00
"	West End St. Ry. due May 1, 1916, 4%	815,000.00
"	West End St. Ry. due Feb. 1, 1917, 4%	2,700,000.00
		$10,945,000.00